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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3967 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

1. Whether Reporters of Local Papers may be allowed to see the judgements? No

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2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

KAMLESHKUMAR HIRALAL SHARMA

Versus

STATE OF GUJARAT

Appearance:

MS MEGHA JANI for Petitioner

Ms. KN Valikarimvala, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 17/07/98

ORAL JUDGEMENT

Rule. Ms. K.N.Valikarimvala, learned A.G.P. waives service of notice of rule on behalf of the respondents.

At the request of learned Counsel appearing for the parties, the petition is heard today.

By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of certiorari or any other appropriate writ, order or direction to quash and set aside order dated June 6, 1996 passed by the Joint Director, Transport, State of Gujarat, Ahmedabad, by which prayer of the petitioner to grant No Objection Certificate for transferring the ownership of vehicle bearing registration No. GTT-8913 to Shree Vighneshwar Genesh Devasthan Trust, Kopergaon, is rejected on the ground that the said vehicle was not used for the reasons beyond the control of the petitioner.

2. The petitioner is owner of a vehicle bearing registration no. GTT-8913. It is registered with the Office of respondent no.2. The vehicle was being used as a contract carriage vehicle. It is the case of the petitioner that in May, 1994, the vehicle required major repairing and could not be put to use. On application being made, certificate was granted to the petitioner for a period from 1.6.1994 to 31.8.1994 for non-user of the vehicle. The repairing work could not be completed by August 31, 1994 and it was only in March, 1995 that the vehicle could become road worthy. Again, in July, 1995 the vehicle met with an accident and the petitioner was compelled to put the vehicle in a garage for repairing. This time also necessary intimation was sent by the petitioner to the authorities communicating that the vehicle was not used in the month of July, 1995. In October, 1995, the vehicle went out of order and, therefore, the petitioner decided to send it to a garage situated at Kopergaon, Maharashtra for the purpose of repairing. The petitioner applied for special permission for the purpose of shifting the vehicle to the State of Maharashtra for the purpose of repairing, which was granted by respondent no.2.

2. Thereafter the petitioner decided to donate the vehicle to Shree Vigneshwar Ganesh Devasthan Trust, Kopergaon, Maharashtra. The petitioner, therefore, initiated proceedings for obtaining no objection certificate from respondents in the month of October, 1995. The Regional Transport Officer, Surat referred the matter to the Joint Director, Transport, Gujarat State,

Ahmedabad, as he was the competent authority to grant necessary certificate. The Joint Director, Transport refused to issue no objection certificate to the petitioner vide communication dated June 6, 1996 on the ground that the petitioner failed to establish that the petitioner had not used the vehicle in question from 1.1.1994 to 24.2.1995 for reasons beyond its control. The order passed by the Joint Director, Transport, Gujarat State, Ahmedabad is produced by the petitioner at Annexure-H to the petition. This order is challenged by the petitioner in present petition on several grounds.

3. On behalf of the respondents, Mr. B.T. Mistry, Deputy Director of Transport, Gujarat State, Ahmedabad has filed reply affidavit controverting the averments made in the petition.

4. I have heard the learned Counsel appearing for the parties.

5. In my view, the impugned order will have to be set aside in view of the decision rendered in the case of KAUSHIKBHAI K.PATEL AND ANOTHER v. STATE OF GUJARAT AND OTHERS, Special Civil Application no. 10356/96 decided on April 23, 1998 by Division Bench comprising the Chief Justice Mr. K. Shreedharan & Mr. Justice A.R. Dave. In the said case, after examining validity of Rule-5 of the Bombay Motor Vehicles Tax Rules, 1959, the Court has held that the phrase, "for reasons beyond the control of such owner or person" occurring in clause (b) of sub-section (5) of Section 3A of the Bombay Vehicle Tax Act, 1958 as amended by Act no. 3 of 1992, is ultravires. The said provision is struck down as being beyond the legislative competence of State Legislature.

6. As the phrase "for reasons beyond the control of such owner or person" is struck down as being beyond the legislative competence of State Legislature, I am of the view that the Joint Director, Transport, Gujarat State, Ahmedabad was not justified in rejecting the application submitted by the petitioner on the ground that the petitioner had failed to establish that non-user of the vehicle in question was beyond its control. Consequently, the direction given by the Joint Director to recover tax with penalty for the period during which the vehicle was not used also will have to be set aside. It may be mentioned that judgment rendered by the Division Bench in Special Civil Application no. 10356/96 has become final and it is not brought to the notice of the Court that the said judgment is assailed before higher forum.

For the foregoing reasons, the petition succeeds.
The order dated June 6, 1996 passed by the Joint Director, Transport, Gujarat State, Ahmedabad, which is produced at Annexure-H to the petition, is hereby set aside and quashed. If any amount of tax is paid by the petitioner in respect of the vehicle in question for the period during which it was not used, the same shall be refunded to the petitioner. Respondent no.2 is directed to reconsider the application submitted by the petitioner for obtaining no objection certificate to enable it to transfer the vehicle on merits and in accordance with law as well as observations made in this judgment, as early as possible and preferably within three months from the date of receipt of the writ. Rule is made absolute accordingly, with no order as to costs.

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(patel)